

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

SARA MEEKS,

Plaintiff,

vs.

**PERFORMANT RECOVERY,
INC.; and DOES 1 through 10,
inclusive,**

Defendants.

Civil Action No.: 1:13-cv-644

**COMPLAINT AND DEMAND
FOR JURY**

COMPLAINT

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff, Sara Meeks, an individual consumer, against Defendant, Performant Recovery, Inc., for violations of the law, including, but not limited to, violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business here.

III. PARTIES

3. Plaintiff, Sara Meeks, is a natural person with a permanent residence in Sanford, Lee County, North Carolina 27330.

4. Upon information and belief, the Defendant, Performant Recovery, Inc., is a corporation engaged in the business of collecting debt in this state and in several other states, with its principal place of business located at 333 North Canyons Parkway, Suite 100, Livermore, Alameda County, California 94551. The principal purpose of Defendant is the collection of debts in this state and several other states, and Defendant regularly attempts to collect debts alleged to be due to another.

5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

6. The debt that Defendant is attempting to collect on is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services, which are the subjects of the transaction, is

primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

7. In December of 2012, Defendant, in connection with the collection of the alleged debt, stated to Plaintiff that if she does not make payments of \$450 per month Defendant would take Plaintiff and her co-signer to Court.

8. In December of 2012, Defendant, in connection with the collection of the alleged debt, stated to Plaintiff that if she does not make payments of \$450 per month Defendant would garnish Plaintiff.

9. In December of 2012, Defendant, in connection with the collection of the alleged debt, stated to Plaintiff that if she does not make payments of \$450 per month Defendant would take Plaintiff's co-signer's home.

10. The natural consequences of Defendant's statements and actions were to unjustly condemn and vilify Plaintiff for her non-payment of the debt she allegedly owed.

11. The natural consequences of Defendant's statements and actions were to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

12. The natural consequences of Defendant's statements and actions were to cause Plaintiff mental distress.

13. Defendant utilized unfair and unconscionable means to collect on Plaintiff's alleged debt, by lying to and misleading Plaintiff.

V. FIRST CLAIM FOR RELIEF

14. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

15. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, the following:

- (a) Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of an alleged debt; and
- (b) Defendant violated §1692d(2) of the FDCPA by using obscene or profane language or language the natural consequences of which is to abuse the hearer or reader in connection with the collection of an alleged debt; and
- (c) Defendant violated §1692e of the FDCPA by using a false, deceptive, or misleading representation or means in connection with the collection of the alleged debt; and
- (d) Defendant violated §1692e(4) of the FDCPA by giving the false representation or implication that nonpayment of the alleged debt will result in the seizure of any property or wages of any person

when such action is unlawful and the Defendant does not intend to take such action; and

(e) Defendant violated §1692e(5) of the FDCPA by threatening to take action that the Defendant does not intend to take and/or the Defendant cannot legally take; and

(f) Defendant violated §1692e(10) of the FDCPA by using false representation or deceptive means in connection with the collection the alleged debt; and

(g) Defendant violated §1692f of the FDCPA by using unfair or unconscionable means in connection with the collection of an alleged debt.

16. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

17. As a result of the foregoing violations of the FDCPA, Defendant is liable to the Plaintiff, Sara Meeks, for declaratory judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney fees.

VI. SECOND CLAIM FOR RELIEF

18. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

19. Defendant violated the North Carolina Fair Debt Collection Practices Act, N.C. Gen.Stat. § 58-70, et seq.

20. The Plaintiff is a 'person' as the term is defined by N.C. Gen. Stat. § 58-70-6(4).

21. The Defendant is a 'collection agency' as the term is defined by N.C. Gen. Stat. § 58-70-15, and is duly licensed to collect debt in the state of North Carolina pursuant to N.C. Gen. Stat. § 58-70-1.

22. Defendant's violations include, but are not limited to, the following:

(a) Defendant violated §58-70-110 of the NCFDCPA by using fraudulent, deceptive or misleading representations to collect or attempt to collect a debt or obtain information concerning a consumer.

23. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

24. As a result of the foregoing violations of the NC FDCPA, Defendant is liable to the Plaintiff Sara Meeks for actual damages, statutory damages, and costs and attorney fees.

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WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant, Performant Recovery, Inc., for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA and the NC FDCPA.
- B. Actual damages.
- C. Statutory damages.
- D. Costs and reasonable attorney fees.
- E. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law.
- F. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff, Sara Meeks, demands trial by jury in this action.

Dated August 5, 2013

RESPECTFULLY SUBMITTED,

/s/ Christopher D. Lane

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